

Exhibit 41

1
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF DELAWARE

4 ----- X
5 MAGTEN ASSET MANAGEMENT CORPORATION and
6 LAW DEBENTURE TRUST COMPANY OF NEW YORK,
7 Plaintiffs,

8 -vs-

9 NORTHWESTERN CORPORATION,
10 Defendant.

11 Civil Action No. C.A. No. 04-1494 (JJF)

12 ----- X
13 MAGTEN ASSET MANAGEMENT CORP.,
14 Plaintiff,

15 -vs-

16 MICHAEL J. HANSON and ERNIE J. KINDT,
17 Defendants.

18 Civil Action No. C.S. No. 05-499 (JJF)

19 ----- X
20 DATE: November 8, 2007

21 TIME: 9:00 a.m.

22
23 Deposition of ROBERT W. BERLINER, held
24 at the offices of Curtis, Mallet-Prevost, Colt &
25 Mosle, 101 Park Avenue, New York, New York,

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1 - ROBERT W. BERLINER -

2 any attorneys representing the plaintiffs in this
3 action regarding this Complaint?

4 A. No, sir.

5 Q. I'd like to refer your attention to
6 Page 10 of the Complaint, Paragraph 51.

7 Do you have that, sir?

8 A. Yes, I do.

9 Q. It states, "The debtor was insolvent
10 both immediately before and immediately after the
11 acquisition of MPLLC and the assumption of related
12 liabilities. Debtor was engaged in a business with
13 unreasonably small capitalization and incurred
14 debts beyond its ability to pay both immediately
15 before and immediately after the acquisition of
16 MPLLC and the assumption of liabilities."

17 Sir, do you understand that the debtor
18 referred to in this paragraph is Northwestern
19 Corporation, the defendant in this case?

20 MR. KAPLAN: Rather than asking the
21 question, it's defined up front. I'd rather have
22 the witness look at the definition.

23 MR. PIZZURRO: That's fine. I just want
24 his understanding.

25 A. That's my understanding, yes.

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1 - ROBERT W. BERLINER -

2 Q. Do you recall whether it was more than
3 one conversation?

4 A. It was one conversation.

5 Q. What was said? What did you say and
6 what did they say, to the best of your
7 recollection, in that conversation?

8 A. The essence of the conversation was that
9 they communicated to me that counsel had asked us
10 to opine, as I have in the fourth opinion on Page 4
11 of my report, based on a hypothetical assumption
12 that Clark Fork remained directly obligated for the
13 QUIPS following the going flat transactions.

14 Q. Sir, let me -- you do understand that
15 the issue in Paragraph 51 is the solvency of
16 Northwestern Corporation; do you not?

17 A. Yes.

18 Q. Can you explain to me, then, the
19 relationship between that allegation and Opinion
20 Number 4?

21 MR. KAPLAN: Objection to form.

22 A. Yes.

23 Q. Please, could you explain?

24 A. In reading the deposition transcripts in
25 the case, a lot of the testimony had to do with the

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1 - ROBERT W. BERLINER -

2 Q. Do you recall, reviewing this paragraph
3 of the Complaint, when you looked at the Complaint?

4 A. Yes.

5 Q. Were you ever asked to offer an opinion
6 regarding the allegations contained in this
7 paragraph?

8 A. No.

9 Q. Did you ever consider an opinion
10 regarding the allegations contained in this
11 paragraph?

12 A. No.

13 Q. Was there ever any discussion that you
14 had either with your colleagues or with any
15 attorneys representing the plaintiffs concerning
16 the allegations contained in this paragraph?

17 MR. KAPLAN: Object to the form.

18 A. I think the answer is yes.

19 Q. Okay. And what -- with whom did you
20 have that -- those discussions, conversations or
21 conversation?

22 A. With Mr. Holmes and Mr. Schwitter.

23 Q. When did you have those conversations or
24 conversation?

25 A. In August or September of this year.

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1 - ROBERT W. BERLINER -

2 going flat transaction, the insolvency issues and
3 those kinds of things. And I raised the question
4 with my colleagues, you know, much of the testimony
5 is seemingly irrelevant to the opinions that we're
6 going to be expressing in our report and isn't that
7 an odd situation for us?

8 And it was then that I learned that
9 the only way that we were going to even remotely
10 address any of those was by offering the opinion I
11 referred to based on the hypothetical assumption.

12 Q. Let's look at Opinion Number 4. Okay.
13 It states, "Assuming that Clark Fork remained
14 directly obligated for the QUIPS, following the
15 November 15th, 2002, going flat transaction, its
16 total liabilities would have materially exceeded
17 its total assets."

18 Can you explain to me how that opinion
19 relates to the solvency or insolvency of
20 Northwestern before or after the going flat
21 transaction?

22 MR. KAPLAN: Asked and answered.

23 A. The relationship -- obviously, it
24 doesn't relate. The relationship, in my mind,
25 was -- it was the linkage as to how -- how come I

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1 - ROBERT W. BERLINER -
 2 wasn't going to address the issues related to the
 3 going flat transaction and the solvency or
 4 insolvency of Northwestern that for some reasons,
 5 that were apparently legal reasons, counsel had
 6 restricted my attention to just this particular
 7 hypothetical assumption and that's the linkage.

8 Q. So you understood -- am I correct that
 9 you understood that counsel was specifically not
 10 asking you to opine regarding the solvency of
 11 Northwestern?

12 MR. KAPLAN: Object to the form.

13 A. Not because they said that in so many
 14 words but because this is all that I was asked to
 15 do, so obviously I wasn't asked to address the
 16 solvency of Northwestern.

17 Q. Did you question that in the
 18 conversation that we're now referring to that you
 19 had with your colleagues, did you question why you
 20 were not being asked to offer an opinion regarding
 21 solvency or insolvency of Northwestern?

22 A. Yes.

23 Q. What did they tell you?

24 A. They told me that this isn't our area of
 25 expertise and that may have been a reason why we

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1 - ROBERT W. BERLINER -
 2 Northwestern or any of the ramifications relating
 3 to the going flat transaction.

4 Q. You did rely, however -- strike that.

5 Your report reflects that you did review
 6 deposition transcripts taken in this case, correct?

7 A. Correct.

8 Q. Did you view those as irrelevant to any
 9 of the opinions that you've offered in this case?

10 A. No.

11 Q. Okay. But irrelevant to Opinion
 12 Number 4, is that what I understand; is that
 13 correct?

14 MR. KAPLAN: Object to form.

15 A. Yes.

16 MS. DELANEY: Are you expecting any
 17 males to join us? There is apparently a
 18 Mr. Schwartz here to join the deposition. Does
 19 anyone know who he is?

20 Q. Off the record.

21 (Whereupon, there was a brief recess in
 22 the proceedings.)

23 Q. Mr. Berliner, prior to your retention by
 24 Fried, Frank and Storch Amini in this case, had you
 25 ever been employed by Magten Asset Corporation?

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1 - ROBERT W. BERLINER -
 2 weren't asked to address it. But I never did find
 3 out by conversations with counsel as to the reason
 4 or not.

5 This was what I was asked to do. It was
 6 relatively easy to do it, and so I felt somewhat
 7 delighted that this is all I had to do because I
 8 was concerned about being able to render my report
 9 by the 19th of September.

10 Q. What else was discussed regarding the
 11 allegations in this paragraph. Paragraph 51 of the
 12 Amended Complaint, during the conversation we're
 13 referring to?

14 A. Nothing else.

15 Q. You testified a moment ago that in that
 16 conversation you remarked that much of what you had
 17 read in the deposition testimony seemed to be
 18 irrelevant to the issues that you were being asked
 19 to opine on.

20 Do you recall saying that?

21 A. Yes.

22 Q. Why did you feel that way?

23 A. Because I wasn't being asked to express
 24 any opinions such as the ones you've asked me about
 25 relating to the solvency or insolvency of

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1 - ROBERT W. BERLINER -

2 MR. KAPLAN: Object to the form.

3 A. No.

4 Q. Had you ever had any associations with
 5 Magten?

6 A. No.

7 Q. Had you ever been employed by Law
 8 Debenture Corporation?

9 A. No.

10 Q. Had you ever had any association with
 11 Law Debenture Corporation?

12 A. No.

13 Q. To the best of your knowledge, did your
 14 organization prior to this retention have any prior
 15 association with Magten?

16 A. No.

17 Q. To the best of your knowledge prior to
 18 this retention, did your organization have any
 19 prior association with Law Debenture?

20 A. No, sir.

21 Q. Can we look, Mr. Berliner, at Exhibit A
 22 to your report, which is at Page -- there's a lot
 23 of different A-1s in here.

24 A. I'll bet.

25 Q. Which is your CV, your curriculum vitae.

9 (Pages 30 to 33)

<p style="text-align: right;">Page 42</p> <p>1 - ROBERT W. BERLINER - 2 As I recall, 2007 is this case, that's 3 what you're referring to; is that right? 4 A. And the second one covered both 2006 and 5 '7. 6 Q. So, am I correct in understanding that 7 the work you did in 2006 with respect to a 8 142 goodwill impairment analysis is work that 9 relates to this litigation? 10 A. No. 11 Q. I'm sorry. Did it relate to a 12 litigation? 13 A. Yes. 14 Q. Did you offer an opinion as an expert in 15 this litigation? 16 A. No. 17 Q. The work that you performed in 2005, was 18 that also in connection with a litigation? 19 A. Yes, sir. 20 Q. Did you offer an opinion in that 21 litigation? 22 A. I did. 23 Q. What was the name of that case? Do you 24 recall the name of the case? 25 A. Let me see if I can get it from -- the</p>	<p style="text-align: right;">Page 44</p> <p>1 - ROBERT W. BERLINER - 2 the second case that you referred to, which I 3 believe was 1993, in which a disqualification 4 motion was made? 5 A. Yes. It was a class action case 6 involving the Republic Bank, maybe the First 7 Republic Bank. I don't remember the exact name 8 of -- Texas, not New York. 9 Q. Do you recall what court that was in? 10 A. Yes. It was a court in Texas. 11 Q. Do you recall whether -- 12 A. Dallas, I believe. I believe federal 13 court in Dallas. 14 Q. Earlier, if you recall, we were 15 discussing a discussion you had with your 16 colleagues regarding the allegations in 17 Paragraph 51 of the Complaint. 18 Do you recall that testimony? 19 A. Not in the Complaint in this litigation, 20 but the First Amended Complaint. 21 Q. Yes, sir, the First Amended Complaint. 22 A. Yes, sir. 23 Q. Do you remember that testimony? 24 A. Yes. 25 Q. Sir, do you recall whether or not either</p>
<p style="text-align: right;">Page 43</p> <p>1 - ROBERT W. BERLINER - 2 name of the case was the Huff Alternative Income 3 Fund LP against PriceWaterhouseCoopers LLP. 4 Q. Is that the case which is listed at 5 Page B2 of Exhibit B to your report? 6 A. Yes, sir. 7 Q. What was -- were you representing 8 plaintiff or the defendant in that case? 9 A. The plaintiff. 10 Q. Was there a judgment or verdict in that 11 case? 12 A. I believe that case settled. 13 Q. Sir, do you remember the name of the 14 case you testified to in 1992 where there was a 15 successful disqualification motion made with 16 respect to your participation? 17 MR. KAPLAN: Object to the form. 18 A. I refer to it as the Interfund case, but 19 I don't think that was the exact name of the case, 20 so I don't recall the exact name of the case. 21 Q. What court was that case? 22 A. I don't recall. 23 Q. Do you recall the state? 24 A. No. 25 Q. Do you recall the name of the case --</p>	<p style="text-align: right;">Page 45</p> <p>1 - ROBERT W. BERLINER - 2 of your colleagues, Mr. Holmes or Mr. Schwitter, 3 had done a preliminary analysis of Northwestern 4 solvency either before or after the going flat 5 transaction? 6 A. I recall we did not. 7 Q. You did not? 8 A. No. 9 Q. No one at your organization did; is that 10 correct? 11 A. That's correct. 12 Q. Do you know if any such preliminary 13 analysis was ever done by anyone in the employ of 14 the plaintiffs in this case? 15 A. No, I don't. 16 Q. Sir, if we look back again at Page 4 of 17 your report, Opinion Number 1. Opinion Number 1 18 states, "The consolidated financial statements of 19 NW," -- Northwestern, "originally filed with the 20 SEC Forms 10-Q for the quarters ended March 31st, 21 June 30th and September 30th, 2002, were materially 22 false and misleading as a result of various 23 violations of GAAP and SEC regulations." 24 Sir, did you or do you have an 25 understanding as to why -- strike that.</p>

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1 - ROBERT W. BERLINER -

2 Do you have an understanding as to how
3 that opinion is relevant to any issue in this
4 lawsuit?

5 A. Yes.

6 Q. What's your understanding?

7 A. One, had these violations not taken
8 place, the covenants might not have been violated.
9 Two, had the financial statements been properly
10 presented, maybe the Montana Power Commission
11 wouldn't have approved the going flat transaction
12 or whoever had to approve it wouldn't have approved
13 it. Maybe that would never have taken place.

14 Those would be the kinds of things I
15 think would make my opinion relevant.

16 Q. Where did you obtain that understanding?

17 A. Purely supposition on my part.

18 Q. Did anyone ever tell you those things?

19 A. No.

20 Q. Did you ever have a conversation in
21 which you were told or in which it was discussed
22 that this was why your opinion in Number 1 was
23 relevant?

24 A. No.

25 Q. It was purely your own analysis based on

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1 - ROBERT W. BERLINER -

2 A. Because it seemed to me from all the
3 documents I read that there was approval required
4 for this transaction to go through. And I guess my
5 recollection is that the Montana Public Service
6 Commission -- Public Utility Service Commission was
7 involved in that approval and that they might have
8 thought differently about it had the financials --
9 the true financial condition of Northwestern been
10 known.

11 Q. Do you have an understanding as to
12 whether or not the Montana Public Service
13 Commission, in fact, approved the transaction?

14 MR. KAPLAN: Object to form.

15 A. No.

16 Q. Do you have any understanding as to when
17 Northwestern may have applied to the Montana Public
18 Service Commission for the approval of the
19 transaction?

20 MR. KAPLAN: Object to the form.

21 A. I assume it was prior to the transaction
22 taking place.

23 Q. Do you have any understanding as to
24 whether or not the financials upon which you opine
25 were put before the Montana Public Service

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1 - ROBERT W. BERLINER -

2 the reading of the Complaint; is that correct?

3 A. And the deposition transcripts
4 primarily.

5 Q. Sir, do you have any experience with the
6 Montana -- you called it the Montana Power
7 Commission.

8 Were you referring to the Montana Public
9 Service Commission?

10 A. Yes.

11 Q. Do you have any experience with the
12 Montana Public Service Commission?

13 A. No, sir.

14 Q. Do you know what the scope of authority
15 is of the Montana Public Service Commission?

16 A. No.

17 Q. Do you know whether the Montana Public
18 Service Commission could have approved the going
19 flat transaction?

20 A. Not with any degree of certainty.

21 Q. Why did you assume that your opinion
22 given in Number 1 would be relevant, then, to
23 whether or not the Montana Public Service
24 Commission may have taken some action with respect
25 to the going flat transaction?

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1 - ROBERT W. BERLINER -

2 Commission at the time the application was made?

3 MR. KAPLAN: Object to the form.

4 A. No, I don't.

5 Q. Would it change your view if I were to
6 tell you that, in fact, the financials upon which
7 you offered an opinion were not before the Montana
8 Public Service Commission when it approved the
9 transaction?

10 MR. KAPLAN: Object to the form.

11 A. Would it change what view?

12 Q. The view that you expressed that your
13 Opinion Number 1 is relevant; but for the
14 violations of GAAP, the Montana Public Service
15 Commission might have acted differently than it
16 did?

17 MR. KAPLAN: Object to the form.

18 A. Yes. That would change my view.

19 Q. What would your view be if I were to
20 tell you that?

21 A. Well, if the financials for the first
22 three quarters of 2002 had not been placed before
23 the Montana Power Commission, then the
24 misstatements in those financial statements, I
25 guess, wouldn't have been known to the utility

13 (Pages 46 to 49)

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1 - ROBERT W. BERLINER -

2 A. It's to take the impairment analysis
3 that American Appraisal performed and update it. I
4 don't know that I would call it an entirely new
5 analysis.

6 Q. I may come back to that, but for the
7 moment I just want to direct your attention to the
8 last part of your report. It's on Page 5-1 of your
9 report.

10 Mr. Berliner, Page 5-1, the assumption
11 which you built into your opinions that Clark Fork
12 remained directly liable under the QUIPS following
13 the going flat transaction.

14 A. Yes.

15 Q. What if Clark Fork had not remained
16 liable on the QUIPS following the going flat
17 transaction, would your opinion have changed?

18 A. No. My opinion is based on a
19 hypothetical assumption that's stated here, that
20 such opinion would never change. It's based on
21 that hypothetical assumption.

22 Q. I see. So, your assumption -- your
23 opinion is had Northwestern -- this has to be -- I
24 think it's not explicit but it must be implicit.

25 Had Northwestern transferred all of the

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1 - ROBERT W. BERLINER -

2 the proceedings.)

3 MR. PIZZURRO: I have no further
4 questions.

5 EXAMINATION BY MR. KALECZYC:

6 Q. Mr. Berliner, my name is Stan Kaleczyc.
7 I represent Mike Hanson and Ernie Kindt in the
8 Magten Asset Management versus Hanson and Kindt
9 case.
10

11 If I understood your testimony earlier
12 this morning, you personally came on board and were
13 engaged to work on your expert report on about
14 August 11th of 2007.

15 MR. KAPLAN: Objection.

16 A. That was about when we found out the due
17 date.

18 Q. When did you -- well, when did you begin
19 to personally work on the expert report that you've
20 offered in this case?

21 A. I began probably at the tail end of
22 July.

23 Q. For the 50 or so days between the end of
24 July and September 19th, the date of the report,
25 could you estimate for me about how much time you

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1 - ROBERT W. BERLINER -

2 assets except the Milltown Dam to itself, but left
3 liabilities, simply the QUIPS liabilities to be
4 paid by Clark Fork, that would have rendered Clark
5 Fork insolvent or would have put it in a position
6 where its total liabilities exceeded its total
7 assets.

8 A. Exactly.

9 MR. KAPLAN: Objection to the form.

10 Q. So it has to be both, both Northwestern
11 had to take the assets and Northwestern had to
12 leave that liability, correct?

13 A. Correct.

14 Q. If both of those assumptions aren't
15 built in, of course, we're talking about a
16 different set of facts and hypotheticals and you
17 have no opinion; is that correct?

18 A. That's correct.

19 Q. It's a little like if my mother had
20 wheels, she'd be a car.

21 MR. KAPLAN: Objection.

22 A. I don't know your mother.

23 MR. PIZZURRO: Let's take five minutes,
24 please.

25 (Whereupon, there was a brief recess in

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1 - ROBERT W. BERLINER -

2 spent working on the report?

3 A. Yes. I'd say about 200 hours.

4 Q. You had two colleagues principally who
5 also were working on the report?

6 A. Yes.

7 Q. Did they begin working on the report and
8 reviewing documents before the end of July?

9 A. Yes, they did.

10 Q. Do you know about when they began?

11 A. They began right after the November '06
12 meeting that I talked about.

13 Q. So, they worked on the report for
14 approximately ten months then, from November of '06
15 until September of '07?

16 A. Yes.

17 Q. And do you know approximately how many
18 hours they worked on the report?

19 A. I do.

20 Q. Can you tell me that, please?

21 A. Yes. Mr. Holmes worked approximately
22 800 hours, and Mr. Schwitter approximately
23 1600 hours.

24 Q. So that's 2,400 hours for the two of
25 them plus 200 hours of your time, so we're up to

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1 - ROBERT W. BERLINER -
 2 about 2700 hours?
 3 A. And a few hundred of some other people.
 4 Q. You anticipated my next question.
 5 So maybe about 3,000 hours, give or
 6 take, by your firm?
 7 A. I think our total input hours through
 8 October 31st was 3,100 hours.
 9 Q. In preparing your expert report, did you
 10 review the Complaint filed in Magten versus Hanson
 11 and Kindt?
 12 A. Yes.
 13 MR. KAPLAN: Objection to the form.
 14 Just to clarify you're talking about the First
 15 Amended Complaint?
 16 MR. KALECZYC: No. I'm talking about
 17 the Complaint in Hanson and Kindt?
 18 Q. If you would turn, Mr. Berliner, to
 19 Paragraph -- or excuse me, Pages 2 and 3 of your
 20 report where you have the Scope of Engagement,
 21 Paragraph B.
 22 Maybe I missed it, but I did not see the
 23 Hanson and Kindt report listed, unlike the First
 24 Amended Complaint in the Northwestern case.
 25 MR. KAPLAN: Objection to the form.

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1 - ROBERT W. BERLINER -
 2 Q. Is that correct? It's not listed in as
 3 part --
 4 A. I believe that's correct.
 5 Q. What other materials did you review that
 6 are not listed either in Section B, Scope of
 7 Engagement, or on Exhibit E, which is the listing I
 8 think of Bates stamped documents you looked at?
 9 A. I don't think there are any others.
 10 Q. Throughout your report you refer to
 11 various accounting standards.
 12 Were there any other accounting
 13 standards that you relied upon that are not
 14 discussed specifically in your report?
 15 A. The ones discussed in my report are the
 16 principal ones.
 17 Q. I understand that they're the principal
 18 ones that you relied upon.
 19 My question, though, Mr. Berliner, was;
 20 in addition to the principal ones, are there other
 21 accounting standards upon which you relied but
 22 perhaps you did not reference?
 23 A. The answer is yes.
 24 Q. And could you tell me, from your memory
 25 sitting here today, which other accounting

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1 - ROBERT W. BERLINER -
 2 standards those were?
 3 A. No, I can't.
 4 Q. Could you describe them, if not by
 5 specific number, by the topic of the accounting
 6 standard?
 7 A. There are various accounting standards
 8 that deal with prior period adjustments and
 9 correction of errors.
 10 There are standards that deal with
 11 materiality and those are the ones that come
 12 quickly to mind that aren't directly related to the
 13 specific issues.
 14 Q. Just so that it's clear to me,
 15 Mr. Berliner, did you specifically refer to those
 16 standards in preparing the report, or did you rely
 17 upon your general knowledge of the subject matter
 18 of those standards?
 19 A. The latter, my general knowledge of
 20 those matters.
 21 Q. So then the only accounting standards
 22 that you specifically reviewed in preparing the
 23 report are the ones that are cited in the report
 24 itself?
 25 A. Yes and no. I noticed in thumbing

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1 - ROBERT W. BERLINER -
 2 through the pages that on Page 1-3 I cited from
 3 SFAS Number 5. I know that standard pretty well,
 4 and so I did not go back to read that standard.
 5 However, in drafting the report, my
 6 colleague excerpted from that standard. I read the
 7 excerpts on Page 1-3, and they conformed to my
 8 recollection of what that standard said. I didn't
 9 go back and check word for word that he had
 10 excerpted each word accurately.
 11 Q. I believe it was your testimony this
 12 morning -- and correct me if I didn't hear it or
 13 I'm remembering it not properly, that the
 14 appendices were prepared by your colleagues and
 15 reviewed -- you reviewed their work?
 16 A. That's correct.
 17 Q. So, you're not the original author of
 18 any of the material contained in the appendices to
 19 the report; is that correct?
 20 A. That's correct.
 21 Q. In reviewing the Complaint in Magten
 22 versus Hanson and Kindt, sitting here today, what
 23 is your understanding of what the allegations are
 24 against Mr. Hanson and Mr. Kindt?
 25 A. I don't recall what's in that Complaint.

37 (Pages 142 to 145)

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2 It was among the early documents that I looked at.
3 and I did not address any allegations against any
4 specific individuals. That was not within the
5 scope of my engagement.

6 Q. Did you discuss the Hanson and Kindt
7 Complaint with anyone before the time that you
8 prepared your expert report?

9 A. I did not.

10 Q. Have you discussed the Hanson and Kindt
11 Complaint with anyone since the time that --
12 September 19th when the report was finalized?

13 A. I did not.

14 Q. Did anyone specifically tell you not to
15 address the allegations contained in the Hanson and
16 Kindt Complaint?

17 A. No, sir.

18 Q. Why is it then, Mr. Berliner, that your
19 expert report references both the case against
20 Northwestern and the case against Hanson and Kindt?
21 When I say "references," I mean in the title
22 caption on Page 1.

23 A. I don't recall the reason.

24 Q. In your report, do you render any
25 opinion concerning Mike Hanson's knowledge

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2 A. That's correct.

3 Q. During the time period on or about
4 November 15th, 2002, do you know what Mr. Hanson's
5 position was with Northwestern?

6 A. I understood him to be the -- the head
7 of the utility business.

8 Q. Could you -- when you say "utility
9 business," what do you mean by that?

10 A. Northwest Energy, the business in South
11 Dakota and then eventually Montana as well.

12 Q. Do you know if Northwestern had any
13 utility business activities in any other states
14 besides South Dakota and Montana?

15 A. I think there was one other state. I
16 can't recall whether it's North Dakota. There's
17 one other state, maybe more than one other state.

18 Q. With respect to Mr. Kindt, do you know
19 what position Mr. Kindt held with Northwestern on
20 or about November 15th, 2002?

21 A. I think he was the vice president of
22 accounting.

23 Q. Was he the vice president of accounting
24 for Northwestern Corporation?

25 A. I think he was with Montana Power. I'm

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1 - ROBERT W. BERLINER -

2 concerning whether there was inadequate
3 consideration given in the going flat transaction?

4 MR. KAPLAN: Objection to the form.

5 A. No, I don't.

6 Q. Did you examine that issue as part of
7 the preparation of your expert report?

8 A. I did not.

9 Q. Did you, in the course of preparing your
10 opinion, form an opinion as to whether Mike Hanson
11 violated any generally accepted accounting
12 principles?

13 A. I did not.

14 Q. Did you consider whether Mr. Hanson may
15 have violated any generally accepted accounting
16 principles?

17 A. No. As I indicated, I didn't address
18 myself to any one individual.

19 Q. Likewise, then, I assume that you have
20 no opinion as to whether Mr. Hanson failed to
21 timely recognize any goodwill impairments?

22 A. That's correct.

23 Q. And it would be your same view, then,
24 with respect to whether Mr. Hanson breached any
25 fiduciary duties owed to anyone?

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1 - ROBERT W. BERLINER -

2 not certain of that.

3 Q. Would it make any difference to you
4 whether he was with Montana -- as you referred to
5 it Montana Power, and I assume you mean Montana
6 Power LLC rather than with Northwestern
7 Corporation?

8 A. No.

9 Q. Why not?

10 A. Because I expressed my opinions based
11 upon Northwestern and it's collective management,
12 not any specific individual. I did not address any
13 of these positions I took in my report as they may
14 apply to any specific individual.

15 Q. So, then I assume your answers will be
16 the same with respect to Mr. Kindt that I asked you
17 with respect to Mr. Hanson, and that is that you
18 did not form an opinion as to whether Mr. Kindt did
19 anything the violate any generally accepted
20 accounting principles in 2002?

21 A. That's correct.

22 Q. And likewise, you have no opinion as to
23 whether Mr. Kindt failed to timely recognize any
24 goodwill impairment for Blue Dot or Expanets?

25 A. That's correct.

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2 Q. And similarly, you have no opinion as to
3 whether Mr. Kindt was involved in a failure to
4 provide adequate consideration with respect to the
5 going flat transaction?

6 A. That's correct.

7 Q. And you have no opinion as to whether
8 Mr. Kindt violated any fiduciary duties?

9 A. That's correct.

10 Q. Do you know whether Mr. Kindt had any
11 responsibilities with respect to Blue Dot? I'm
12 talking about the period in 2002.

13 A. I don't know for certain, but my
14 recollection is he did not.

15 Q. Again, with respect to Mr. Kindt, do you
16 know whether he had any responsibilities with
17 respect to Expanets?

18 A. No, I don't.

19 Q. Do you know whether Mr. Kindt had any
20 responsibilities with respect to the accounting of
21 Northwestern Corporation as distinct from the
22 accounting for the Montana utility business?

23 MR. KAPLAN: Objection to form.

24 A. No, I don't.

25 Q. With respect to Mr. Hanson, do you know

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2 MR. KAPLAN: Objection to form.

3 A. I would think if I were in his shoes and
4 there were financial statements and disclosures
5 that reflected various things relating to the
6 operations for which I was responsible, I would be
7 monitoring that.

8 Q. And those responsibilities, as you
9 testified earlier, refer to the utility business
10 operations of Northwestern, correct?

11 A. That's correct.

12 Q. Would your answers be the same with
13 respect to Mr. Kindt, concerning financial
14 disclosures of Northwestern?

15 A. Yes.

16 Q. So that you would agree with me that
17 Mr. Kindt's responsibilities, if any, associated
18 with the disclosures by Northwestern Corporation's
19 would be limited to the utility business with which
20 he was familiar?

21 A. That would be my recollection, yes.

22 Q. And that would even be the utility
23 business by which he was specifically employed?

24 A. Yes.

25 Q. Did you review the deposition of

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2 whether he had any responsibilities with respect to
3 the management of Blue Dot?

4 A. I don't believe he did.

5 Q. Do you know whether Mr. Hanson had any
6 responsibilities with respect to the management of
7 Expanets?

8 A. I don't believe he did.

9 Q. Do you know whether Mr. Hanson was
10 responsible for any of the accounting activities of
11 Northwestern Corporation?

12 A. I don't believe he was responsible for
13 the accounting.

14 Q. Do you know who was responsible during
15 the 2002 time period for the accounting activities
16 of Northwestern?

17 A. I believe it was Mr. Orme.

18 Q. Do you know who was responsible during
19 that time for financial disclosures which may have
20 been made by Northwestern Corporation?

21 A. Again, I would say Mr. Orme.

22 Q. You would agree with me that to your
23 knowledge Mr. Hanson had no responsibilities for
24 those accounting -- for those disclosure
25 requirements and functions?

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2 Mr. Hanson in preparation of your expert report?

3 A. I did.

4 Q. Did you review the deposition of
5 Mr. Kindt in preparation of your expert report?

6 A. I did.

7 Q. How about the deposition of Mr. Talton
8 Embry?

9 A. No, I did not.

10 Q. Do you know who Mr. Embry is?

11 A. I believe he's with Magten.

12 Q. I think you had testified this morning,
13 Mr. Berliner, that you did not find anything in the
14 depositions that you reviewed to be particularly
15 useful for your expert report.

16 Am I remembering your testimony
17 correctly?

18 MR. KAPLAN: Objection.

19 A. No. That was not accurate.

20 Q. You would help me, then. I don't want
21 to be inaccurate in asking you questions.

22 You reviewed -- tell me first, in
23 addition to the Hanson, Kindt and Embry
24 depositions, what other depositions did you review
25 in the preparation of your expert report?

39 (Pages 150 to 153)

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2 A. They're all listed in the last exhibit
3 to my report; that's Exhibit E.

4 Q. So with respect to those depositions
5 that you did review, Mr. Berliner, you refresh my
6 memory, then, so that the record is accurate as to
7 what you testified to this morning with respect to
8 these depositions.

9 MR. KAPLAN: Just to clarify, I think he
10 meant Exhibit F, so the record is clear.

11 THE WITNESS: You're right; it's
12 Exhibit F.

13 MR. KAPLAN: I apologize for
14 interrupting the questioning.

15 MR. KALECZYC: That's all right.

16 Q. Again, my question was: If you could
17 refresh my memory as to what you testified to this
18 morning about the utility of those -- review of
19 those depositions?

20 A. Yeah. The deposition transcripts
21 covered many subjects. What seems to me to be the
22 principal subject covered, at least in terms of the
23 attention devoted during the time of the
24 depositions, had to do with the utility business,
25 the acquisition of Montana Power, the going flat

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2 is there anything from Mr. Hanson's deposition that
3 you found to be relevant to the opinions that you
4 rendered in your report?

5 A. I don't think so.

6 Q. If we could turn to Page 4 of your
7 report, which contains the opinions, Mr. Berliner.
8 In Opinion Number 2, which contains the four
9 Subparagraphs A through D, each one begins with the
10 term, "Northwestern management knowingly," and then
11 Sub A, "that Northwestern management knowingly
12 violated GAAP in preparing Northwestern's
13 consolidated financial statements for each of the
14 first three-quarters."

15 When you refer to "Northwestern's
16 management," to whom are you referring?

17 A. I'm referring to primarily Mr. Orme, but
18 Mr. Lewis, Mr. Hylland, those top people.

19 Q. You said "primarily" those three
20 individuals. Anyone else?

21 A. Primarily those three, maybe Kendell
22 Cleaver as well, but those people.

23 Q. Mr. Lewis held what position in the
24 company?

25 A. CEO.

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2 transaction, and that kind of stuff.

3 And that's what I meant that I didn't
4 find relevant to the opinions that I would be
5 expressing in my report. But there were other
6 coverage of the Blue Dot and the Expanets
7 situations and the other accounting improprieties
8 at Northwestern that were relevant to the report.

9 Q. Sitting here today, Mr. Berliner, was
10 there anything in Mr. Kindt's deposition that you
11 found relevant to your expert report that you've
12 submitted in these cases?

13 A. I really don't recollect any individual
14 deposition that I read back in early August.

15 Q. Would you agree with me that there are
16 no references to Mr. Kindt's deposition contained
17 in your expert report or the -- including the
18 appendices, other than Exhibit F itself?

19 A. Yes. I believe that's correct.

20 Q. Was that because you found nothing
21 terribly useful or relevant for purposes of the
22 opinions that you'd rendered?

23 A. Yes.

24 MR. KAPLAN: Objection.

25 Q. With respect to Mr. Hanson's deposition,

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2 Q. Mr. Hylland had what position?

3 A. I believe it was COO.

4 Q. Mr. Orme?

5 A. CFO.

6 Q. And Mr. Kendell Cleaver?

7 A. Director of accounting, something like
8 that.

9 Q. So when you're talking about
10 Northwestern's management with respect to
11 Opinion 2A, it would be those four individuals?

12 A. Yes.

13 Q. With respect to your Opinion 2B, which
14 reads, "Northwestern's management knowingly failed
15 to timely recognize goodwill impairment losses by
16 intentionally providing artificial cash flow
17 projections to American Appraisal."

18 Again, are you referring to the four
19 individuals Lewis, Hylland, Orme and Cleaver, or
20 are other people implicated in 2B?

21 A. The other people that would be
22 implicated would be the management of Expanets and
23 the management of Blue Dot.

24 Q. With respect to your Opinion 2C, which
25 reads, "Northwestern's management knowingly failed

<p style="text-align: right;">Page 158</p> <p>1 - ROBERT W. BERLINER - 2 in its various filings with the SEC to comply with 3 the disclosure requirements under SEC regulations." 4 Which individuals are you referring to 5 as management with respect to 2C? 6 A. Mr. Lewis, Mr. Hylland, Mr. Orme and 7 Mr. Cleaver. 8 Q. With respect to your opinion on 2D, 9 which reads, "Northwestern's management knowingly 10 disseminated materially false and misleading 11 information to the public." 12 Again, the same question: Which 13 individuals are you referring to as the management? 14 A. Again, the same answer; the same four 15 people. 16 Q. With respect to your Opinion Number 3, 17 which reads, "Northwestern would have violated its 18 debt covenants for the quarters ended June 30th and 19 September 30th, 2002, but for the violations of 20 GAAP discussed in this report." 21 Do you have an opinion as to whether 22 Mr. Hanson was responsible for any of those 23 violations of GAAP discussed in your report? 24 A. No, I don't. 25 Q. How about Mr. Kindt, any opinion?</p>	<p style="text-align: right;">Page 160</p> <p>1 - ROBERT W. BERLINER - 2 what kinds of information would they need to have 3 about those contracts? 4 MR. KAPLAN: Objection to the form. 5 A. Need to have information as to what the 6 deliverables were under the contract, how the 7 estimates of what the costs would be involved to 8 perform, what was required to be performed under 9 the contract, whether the accounting systems and 10 procedures of the company were such as to be able 11 to reasonably estimate those costs and monitor them 12 as time went on; information of that nature. 13 Q. Would it be fair to say, given your 14 prior answer, that you'd have to have a fairly good 15 working knowledge of the business of Expanets in 16 order to make that determination? 17 A. That would help a lot. 18 Q. In order to do a discounted cash flow 19 analysis for appraisal purposes, is that the kind 20 of activity that can be done by anyone who is a 21 certified public accountant? 22 MR. KAPLAN: Objection to the form. 23 A. No. There are many certified public 24 accountants who don't get involved in that kind of 25 work.</p>
<p style="text-align: right;">Page 159</p> <p>1 - ROBERT W. BERLINER - 2 A. I have no opinion. 3 Q. In your opinion, which individuals were 4 responsible for the GAAP violations? 5 A. The four people I mentioned at 6 Northwestern. 7 Q. And that's -- 8 A. Mr. Lewis, Mr. Hylland, Mr. Orme and 9 Mr. Cleaver, collectively. 10 Q. Now, in your report in a number of 11 places, you discuss such things as -- for example, 12 the proper accounting for the contracts that 13 Expanets had. 14 Do you remember that testimony -- that? 15 A. Yes. 16 Q. What type of analysis would be required 17 to determine the appropriate accounting treatment 18 for those contracts as to whether they should be 19 done on a completed or ongoing basis? 20 MR. KAPLAN: Objection to the form. 21 A. The nature of the contracts and what was 22 called for under the contracts and the ability of 23 the entity to reasonably estimate the percentage of 24 completion. 25 Q. For someone to make that determination,</p>	<p style="text-align: right;">Page 161</p> <p>1 - ROBERT W. BERLINER - 2 Q. In fact, in order to do that kind of 3 work, that requires a specialty or special 4 expertise, wouldn't you agree? 5 A. I don't know that I'd call it a special 6 expertise. It would require some knowledge. 7 Q. When you say "some knowledge," what kind 8 of knowledge are you talking about? 9 A. About what the technique is all about 10 and how to apply it. 11 Q. Having an accounting degree is not, in 12 your view, sufficient background in order to do a 13 discounted cash flow? 14 MR. KAPLAN: Objection. 15 A. No. I think you need a little more than 16 an accounting degree. 17 Q. You might need more than just a 18 certified public accountancy recognition, correct? 19 A. No. I think that if one only had the 20 recognition of a CPA but had experience in doing 21 that kind of thing, that would suffice. 22 Q. So it would require not only the CPA 23 designation but also some practical experience 24 doing that kind of work? 25 A. It wouldn't even require the CPA</p>